IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10043 of 2004

With

SPECIAL CIVIL APPLICATION No. 13066 of 2004

With

CIVIL APPLICATION No. 2174 of 2005

In

SPECIAL CIVIL APPLICATION No. 13066 of 2004

With

CIVIL APPLICATION No. 2175 of 2005

In

SPECIAL CIVIL APPLICATION No. 10043 of 2004

With

CIVIL APPLICATION No. 2176 of 2005

In

SPECIAL CIVIL APPLICATION No. 10043 of 2004

With

CIVIL APPLICATION No. 2177 of 2005

In

SPECIAL CIVIL APPLICATION No. 13066 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TEJAS HARISHBHAI MEHTA - Petitioner(s)
Versus
UNION OF INDIA & 7 - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 4.
MR JJ YAJNIK for Respondent(s) : 1,
MR NIGAM R SHUKLA for Respondent(s) : 4,
RULE NOT RECD BACK for Respondent(s) : 5,
MR MTM HAKIM for Respondent(s) : 5,
MR HARIN P RAVAL for Respondent(s) : 6 - 7.
MR.S.M.GOHIL for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/02/2006

COMMON ORAL JUDGMENT

1. As common question of law and facts arise in both the Special Civil Applications, they are being disposed of by this common judgment and order.

2. It is to be noted that this matter was adjourned time and again at the request of the learned advocates appearing for the parties and it was also agreed that as and when the matter is heard, it will be for final disposal.

3. So far as Special Civil Application No.10043 of 2004 is concerned, by way of said Special Civil Application, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the decision to allot the license of Rail Travelers' Service Agents (hereinafter referred to as “the RTSA”) to respondent No.5 for Surendranagar and a further direction directing respondent No.1 railway authority to allot license of RTSA to the petitioner for Surendranagar.

4. So far as Special Civil Application No.13066 o66 of 2004 is concerned, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the decision of the railway authority selecting respondent Nos.4 to 6 as

RTSA for Rajkot City Railway Station and Bhaktinagar Railway Station as per the impugned order at Annexure C collectively dated 22-7-2004. A further prayer is also made by the petitioner for an appropriate writ, direction and/or order directing respondent No.2 to decide the petitioner's application dated 5-12-2003 for license for RTSA as per Rule 4(2) of the Railway Travelers' Service Agents Rules, 1985.

5. It is the contention on behalf of the learned advocates appearing for the respective petitioners that there is a mal-practice and irregularity committed in issuing RTSA license for Surendranagar as well as Rajkot and Bhaktinagar Railway Station. That committee has not been constituted as per the Rules i.e. the Railway Travelers' Service Agents Rules, 1985. It is also further submitted that no proper inquiry has been made as required under rule 4 of the aforesaid Rules and that even the respective petitioners are not communicated any reasons for rejection of their applications and in fact it is the contention of the petitioner of Special Civil

Application No.13066 of 2004 that his application is not decided at all. It is the contention of the petitioner of Special Civil Application No.10043 of 2004 that in fact the father of the petitioner has already approached respondent No.4 i.e. Central Bureau of Investigation (CBI) with regard to irregularity and illegality committed in issuance of the RTSA license for Surendranagar Railway Station and at the time when the Special Civil Application was filed, the investigation by the CBI was pending. The learned advocates appearing on behalf of the respective petitioners have also made number of submissions on merits with regard to having better qualification than the persons, in whose favour the license is issued and having better accommodation facility and other office premises etc. inclusive of better experience.

6. The Special Civil Application No.10043 of 2004 came up for hearing before the learned Single Judge of this court (Coram: D.N. Patel,J.) and in view of the fact that respondent No.4 CBI was ceased with the

matter especially of unfair practice of allotment of RTSA license, the matter came to be adjourned sin-e-die and it was ordered that as and when investigation by respondent No.4 was over, the petitioner may move an appropriate note or application or oral submission for listing the matter for hearing and accordingly the matter was adjourned sin-e-die. It appears from the record that thereafter, the learned advocate appearing on behalf of the petitioner of Special Civil Application No.10043 of 2004 submitted before the court when the aforesaid Special Civil Application came up for hearing on 31-1-2005 that respondent No.4 – CBI, Gandhinagar has completed the investigation and according to him as per the instructions, the report supports the case of the petitioner and in view of the fact that no report was produced by the CBI, respondent No.4 - CBI was directed to place on record, if not the whole report, a gist of the report concerning to the allegations made in the petition in connection with the allotment of license by the authority and the said order came to be passed on 31-1-2005. Pursuant to the order

dated 31-1-2005, the CBI produced on record the report in the sealed cover on 14-2-2005 and from the order dated 14-2-2005 passed by this court, it appears that the court perused the report and returned the same to Shri Shukla, learned advocate appearing on behalf of the CBI and observed that it *prima facie* appears to the court that even as per the report of the CBI, certain irregularities are found in the matter of allotment of license and therefore, the Competent Officer of the CBI was directed to file short affidavit stating the gist of the report concerning to the process of allotment of license only. It was also found by this court from the report that irregularities are found in the matter of allotment of RTSA license to (1) M/s Muskan Travels of Shri Mayuddin M. Varaiya (2) Shreeji Travels of Nailesh Davda of Rajkot (3) M/s Best Tours and Travels of Shri Deepak Karia of Rajkot and (4) M/s Sunshine Travels of Minesh Mattar of Bhaktinagar and therefore, the learned Single Judge of this court found that when the material is found even by the CBI, such persons should not be allowed to function

as RTSA until further orders and the petitioners were directed to join the concerned license holders who were not joined as party respondents in the concerned petitions and this court issued rule and notice to the newly added respondents and by ad interim order, this court restrained the aforesaid five RTSA from functioning as licensees and the said ad interim order has been continued. The aforesaid Civil Applications are filed by those agents for vacating the ad interim relief granted earlier.

7. Thereafter, pursuant to the order passed by this court, the CBI has filed affidavit-in-reply and the relevant material paragraphs of the affidavit-in-reply of CBI are as under:

> 1.I say that on the basis of a reliable information CBI, Anti-Corruption Branch, Gandhinagar alongwith the Vigilance Wing of the Railways had conducted a Joint-Surprise Check on 30-7-2004 at the O/o DCM(WR), Rajkot and subsequently on four premises of RTSA's who were alloted RTSA Licenses for Rajkot (2 Licenses), Bhaktinagar and Surendranagar area's so

that the alternations in the pre-inspected premises may not be carried out after the receipt of the license and also to ascertain whether the Inspection Report submitted by the committee members was fictitious. On close scrutiny of the relevant seized records obtained from the O/o DCE(WR), Rajkot Division, Kothi Compound, Rajkot and various other facts, following facts came to light:-

2. I say that Western Railway, Rajkot Division vide Advertisement No.C.550/1/Gen dated 20-10-2003 had invited applications for allotment of 4 Licensees to Rail Ticket Service Agents (RTSA's) for Rajkot, Bhaktinagar and Surendranagar Area.

3. I say that after completion of Surprise Check and further scrutiny of documents it appeared that the committee members and the final approving authority i.e. DRM, Rajkot while deliberating upon the applications received have not uniformly adhered to their own parameters. A number of discrepancies in the recommendations of the Committee members and the Approving authority in their observations/ recommendations was observed.

4. I say that pursuant to the order passed by this Honourable Court on 31-1-2005

Confidential Report was placed before this Honourable Court and on perusing the same, this Honourable Court passed an order to stay against conducting business by RTSA. I say that said Confidential Report be perused by the Honourable Court. I say that the same is not placed on record as it will otherwise disclose the evidence collected and the erring individuals/firms may destroy the same.

5. I say that on the basis of available records and findings it was emanating that the Committee members and the final approving authority i.e. DRM, Rajkot have committed criminal misconduct in their official capacity in as much as they acted without public interest in order to obtain pecuniary advantage to the suspect allottee's who have been allotted RTSA License.

6. I say that the allegations on the part of suspect Rly Officials of Rajkot and the allottee's private firms *prima facie* constitute an offence under the Prevention of Corruption Act, 1988.

7. I say that since the Prime Suspect in this case i.e. DRM, Rajkot was an officer of Jt. Secretary Level as much as per Sec.6 of the Delhi Special Police Establishment

Act, 1946 previous approval of Central Government was required to be obtained before registering an FIR. Section 6A of the Delhi Special Police Establishment Act, 1946 prescribes that a previous approval of Central Govt. is required if the suspect employee of the Central Government is of the level of Joint Secretary and above.

8. I say that accordingly a proposal was moved from the CBI seeking permission of the Central Govt./Chairman, Railway Board, New Delhi for registering a case against the Suspect Rly Officials of Rajkot & private persons and for taking necessary legal action as prescribed u/s 6A of the the Delhi Special Police Establishment Act, 1946.

9. I say that in this regard a communication vide D.O. No. 2005/V2/General/CBI/15 dated 25-5-2005 from Railway Board, New Delhi is in receipt admitting therein that as regards allegation *prima facie,* this appears to be an irregular act. It has further been clarified that this case involves complex issues of awarding Commercial Licensees, the requisite expertise of dealing with such issues is available with the Ministry and it can be

adequately & appropriately dealt with by the Ministry of Railways on its own.

Considering the report, the affidavit-in-reply filed by the CBI after preliminary investigation, it is very much clear that the committee members and the final approving authority i.e. DRM, Rajkot have committed criminal misconduct in their official capacity in as much as they acted without public interest in order to obtain pecuniary advantage to the suspect allottee's, who have been alloted RTSA license. The CBI has also prima facie come to the conclusion that the allegation on the part of the suspect Railway Officials of Rajkot and the allottee's private firms *prima facie* constitutes an offence under the Prevention of Corruption Act, 1988. It is very unfortunate that in spite of the aforesaid clear *prima facie* findings given by the CBI, the Railway Administration has not given the sanction and/or prior approval of the Central Government which was required by the CBI before registering the FIR under Section 6-A of the Delhi Special Police

Establishment Act, 1946 as the prime suspect in the case i.e. DRM, Rajkot was an officer of Joint Secretary level and as such as per Section 6-A of the Delhi Special Police Establishment Act, 1946, prior approval of the Central Government was required to be obtained. From the reply of the CBI, it appears that when the CBI moved a proposal seeking permission of the Central Government/Chairman, Railway Board, New Delhi for registering a case against the suspect Railway Officials of Rajkot and private persons and for taking necessary legal action as prescribed under Section 6-A of the Delhi Special Police Establishment Act, 1946, vide communication dated 25-5-2005 from the Railway Board, New Delhi, the CBI is informed that as regards allegation *prima facie* this appears to be an irregular act and it has been clarified by the Railway Board that this case involves complex issues of awarding Commercial Licensees, the requisite expertise of dealing with such issues is available with the Ministry and it can be adequately and appropriately dealt with by the Ministry of Railway on its own.

8. However, considering the papers produced before this court and the report of the CBI and *prima facie* opinion of the CBI, this is a fit case, where the CBI investigates the case after registering a regular criminal case, as even after knowing the contents and the report of the CBI and the *prima facie* conclusion of the CBI, if no order is passed by this court registering the complaint by the CBI, then this court will be failing in its duty. Even in such a serious case, if the Railway Authorities sit tight and considers the case as an irregular act, which according to them can be dealt with by the Railway Authorities and/or can be investigated by the vigilance being the Ministry of Railways, it is very unfortunate. It is required to be noted that though more than a year is passed even after the communication by the Railway Authorities to the Superintendent of Police, CBI, nothing has been pointed out by the learned counsel appearing on behalf of the Railway Authorities whether any action has been taken by the Railway Authorities or not and/or the case has been investigated by the

vigilance being Ministry of Railways or not. Under the circumstances, this court is of the firm opinion that the case is to be investigated by the CBI by registering a regular criminal complaint against all persons, who are *prima facie* found to be indulged in the criminal act inclusive of corruption, if any. Under the circumstances, the CBI is directed to file/register a criminal complaint and proceed further in accordance with law and investigate the case. This court is aware of the fact that the railway authority has refused the proposal of the CBI and/or refused to accord sanction to the CBI to register a complaint. However, it is required to be noted that from the aforesaid, the CBI on its own, may not be in a position to file a complaint and/or investigate the case. However, such a ban may not come in the way of this court in exercise of powers under Article 226 of the Constitution of India and therefore, the aforesaid direction is issued. This court is also aware of the fact that before issuing aforesaid direction, directing the CBI to register a complaint, the alleged accused and/or the officer of the railway authority and/or private persons were not

heard. However, it is required to be noted that before filing a complaint and/or criminal investigation put in motion, the alleged accused are never required to be heard as they will be given ample opportunity during the course of investigation as well as at the trial, on filing of chargesheet and therefore, also the aforesaid direction is issued.

9. Today, when the matter is heard and even considering the report/reply submitted by the CBI, Shri JJ Yagnik, learned counsel appearing on behalf of the Railway Authority has no other option but to concede that the impugned decision for allotment of RTSA in favour of the private respondents are required to be quashed and set aside and a fresh procedure for issuance of RTSA license for the aforesaid are required to be issued. In view of the aforesaid submission made by Shri Yagnik, learned advocate appearing on behalf of the Railway Authority, this court is not required to enter into further merits of the case. Even otherwise, considering the affidavit-in-reply submitted by the

CBI and the CBI *prima facie* having found that the committee members and the final approving authority i.e. DRM, Rajkot have committed criminal misconduct in their official capacity in as much as they acted without public interest in order to obtain pecuniary advantage to the suspect allottees, who have been allotted RTSA license, the orders passed by the respondent Railway Authority in favour of the private respondents allotting RTSA license in their favour cannot be sustained and continued. Under the circumstances, the impugned decision of the respondent Railway Administration in allotting the RTSA license to respondent No.5 of Special Civil Application No.10043 of 2004 and the impugned order dated 22-7-2004 in allotting/granting RTSA license in favour of respondent Nos.4 to 6 of Special Civil Application No.13066 of 2004 are hereby quashed and set aside and the Railway Authorities are directed to initiate fresh procedure for allotment of the RTSA license in accordance with law and on merits and in a fair manner and after following due procedure as required under the Authorization of Railway

Travelers' Agents Rules, 1985.

Rule is made absolute in each of the Special Civil Application with no order as to costs.

10. In view of the disposal of main Special Civil Applications i.e. allowing the aforesaid Special Civil Applications quashing and setting aside the impugned orders granting license in favour of the respondents, no orders in aforesaid Civil Applications.

(M.R.SHAH,J.)

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